

AO 120 (Rev. 2/99)

TO: Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Colorado on the following Patents

DOCKET NO. 11-cv-00617	DATE FILED 3/11/11	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF Unique Product Solutions, Limited		DEFENDANT Rainbow Plastic Products, RLLLP
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 3,744,178		Please see copy of Complaint attached hereto
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNIQUE PRODUCT)	
SOLUTIONS, LIMITED)	CASE NO.:
c/o BDB AGENT CO.)	
3800 Embassy Parkway, Suite 300)	
Akron, Ohio 44333)	JUDGE:
)	
Relator)	
)	
vs.)	COMPLAINT AND JURY DEMAND
)	
RAINBOW VENTURES, LLLP)	
d/b/a RAINBOW PLASTICS)	
226 Basher Drive)	
Berthoud, CO 80513)	
)	
And)	
)	
110 East Oak Street, Suite 200)	
Fort Collins, CO 80524)	
)	
Defendant.)	

COMPLAINT AND JURY DEMAND

Qui tam relator Unique Product Solutions, Limited ("UPS"), for its Complaint against Defendant Rainbow Ventures, LLLP d/b/a Rainbow Plastics ("Defendant"), alleges as follows:

BACKGROUND

1. This is an action for false patent marking under Title 35, Section 292, of the United States Code.
2. Defendant has marked upon, affixed to, and/or used in advertising in connection with certain products the word "patent" and/or words or numbers importing that the product is patented, while Defendant knew, or reasonably should have known, that the

articles were improperly marked. *See, The Forest Group, Inc. v. Bon Tool Co.*, 590 F.2d 1295, 1302-04 (Fed. Cir., 2009). More specifically, Defendant has violated 35 U.S.C. § 292(a) by marking articles with invalid and unenforceable patent rights with the purpose of deceiving the public.

3. 35 U.S.C. § 292 exists to provide the public with notice of a party's valid and enforceable patent rights.

4. False marking deters innovation and stifles competition in the marketplace. More specifically, falsely marked articles that are otherwise within the public domain deter potential competitors from entering the same market and confuse the public.

5. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement.

6. False marking can cause unnecessary investment in costly "design arounds" or result in the incurring of unnecessary costs to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete.

7. False marking deceives the public into believing that a patentee controls the article in question, and permits the patentee to impermissibly extend the term of its monopoly.

8. False marking also increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. More specifically, in each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable.

9. False markings may also create a misleading impression that the falsely marked product is technologically superior to other available products, as articles bearing the term "patent"

may be presumed to be novel, useful, and innovative.

10. 35 U.S.C. § 292 specifically authorizes *qui tam* actions to be brought by any person on behalf of the United States government. By permitting members of the public to sue on behalf of the government, Congress allows individuals to help control false marking when the U.S. government does not have the resources to do so.

THE PARTIES

11. UPS is an Ohio limited liability company with a mailing address of BDB Agent Co., 3800 Embassy Parkway, Akron, Ohio 44333.

12. UPS exists to conduct all lawful business, including but not limited to enforcing the false marking statute as specifically permitted by 35 U.S.C. § 292.

13. In this action, UPS represents the United States and the public, including Defendant's existing and future competitors.

14. Upon information and belief, Defendant is a Colorado limited liability limited partnership with its principal place of business at 226 Basher Drive, Berthoud, CO 80513 or 110 East Oak Street, Suite 200, Fort Collins, CO 80524.

15. Defendant, itself and/or through one or more subsidiaries, affiliates, business divisions, or business units, regularly conducts and transacts business throughout the United States, including in Ohio and within the Northern District of Ohio.

JURISDICTION AND VENUE

16. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

17. This Court has personal jurisdiction over Defendant. Defendant has conducted and does conduct business within the State of Ohio. Defendant, directly or through

subsidiaries or intermediaries, offers for sale, sells, marks and/or advertises the products that are the subject of this Complaint in the United States, the State of Ohio, and the Northern District of Ohio.

18. Defendant has voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Northern District of Ohio. Defendant has committed acts of false marking within the State of Ohio and, more particularly, within the Northern District of Ohio.

19. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because (i) Defendant's products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District; and (iii) Defendant is subject to personal jurisdiction in this District, as described above.

20. UPS brings this action under 35 U.S.C. § 292, which expressly provides that any person may sue for the civil monetary penalties imposed for each false patent marking offense.

FACTS

21. Upon information and belief, Defendant has, or regularly retains, sophisticated legal counsel, including intellectual property counsel.

22. Upon information and belief, Defendant, and its related entities, have experience applying for patents, obtaining patents, and marking its products with its patents.

23. Upon information and belief, Defendant maintains, or its intellectual property counsel maintains on Defendant's behalf, an intellectual property docketing system with

respect to Defendant's intellectual property rights, including Defendant's patents.

24. Defendant knows, or reasonably should know, that 35 U.S.C. § 292 prohibits a person from marking a product with an expired patent number.

25. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

26. Defendant's false marking of its products has wrongfully stifled competition with respect to such products thereby causing harm to UPS, the United States, and the public.

27. Defendant has wrongfully and illegally advertised patent monopolies which it does not possess and, as a result, has benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.

28. Defendant has violated 35 U.S.C. § 292, which prohibits a person from marking a product with an expired patent number.

COUNT 1

FALSE MARKING

29. UPS incorporates by reference the foregoing paragraphs as if fully set forth herein.

30. The application for the United States Patent No. 3,744,178 (the "178 Patent"), titled *Fishing spreader assembly*, was filed on October 4, 1971 and issued by the United States Patent and Trademark Office ("USPTO") on July 10, 1973. See Exhibit A.

31. The '178 Patent expired no later than October 4, 1991, more than 18 years ago.

32. Defendant knew that the '178 Patent expired at least as early as 1991.

33. As of September 1, 2010, Defendant continues to sell, import or offer for sale the following product (the "Falsely Marked Product") which is marked with the '178 Patent, or mark said

product with the '178 Patent, despite the fact that the '178 Patent expired over 18 years ago: Rainbow Plastics A-Just-A Bubble. *See Exhibit B* (A copy of a receipt for the Falsely Marked Product, which was purchased in the District on September 1, 2010, and photographs of the Falsely Marked Product).

34. Upon information and belief, Defendant is selling or offering for sale additional products marked with the '178 Patent, which expired more than 18 years ago.

35. Defendant falsely marked the Falsely Marked Product with the '178 Patent, which expired over 18 years ago.

36. Defendant knew or should have known that marking the Falsely Marked Product with an expired and invalid patent violates 35 U.S.C. § 292, which only authorizes marking on a "patented" article.

37. Defendant intended to deceive the public by marking or causing to be marked the Falsely Marked Product with a patent that Defendant knew expired more than 18 years ago.

PRAYER FOR RELIEF

WHEREFORE, Relator, Unique Product Solutions, Limited requests the Court, pursuant to 35 U.S.C. § 292, to:

- A. Enter judgment against Defendant and in favor of UPS for the violations alleged in this Complaint;
- B. Enter an injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from further violating 35 U.S.C. § 292 by marketing, selling or offering for sale any product that is marked (including packaging) with the '178 Patent, which expired over 18 years ago;

- C. Enter an injunction ordering Defendant to recall all products, including, without limitation, the Falsely Marked Product, that Defendant has sold, caused to be sold or otherwise caused to be placed into commerce that were marked with the '178 Patent, after the expiration date of said patent;
- D. Order Defendant to pay a civil monetary fine of up to \$500 per false marking violation, one-half of which shall be paid to the United States and one-half of which shall be paid to UPS;
- E. Enter a judgment and order requiring Defendant to pay UPS prejudgment and post-judgment interest on the damages awarded;
- F. Order Defendant to pay UPS's costs and attorney fees; and
- G. Grant UPS such other and further relief as it may deem just and equitable.

DEMAND FOR JURY TRIAL

Relator demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

DATED: September 2, 2010

Respectfully submitted:

/s/ David J. Hrina

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Counsel for Plaintiff
Unique Product Solutions, Limited

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(1 of 1)

United States Patent
Denny

3,744,178
July 10, 1973

FISHING SPREADER ASSEMBLY

Abstract

The invention is a fishing spreader having a sinker weight which engages the bottom of a body of water. A vertically movable, freely slidable float holds the upper end of the spreader above the bottom, thereby placing the hooks in a proper position adjacent the bottom. The spreader has end loops through which pass the leaders for snelled fish hooks. A keeper member is provided for each loop, and means spaced from said loops is provided for attaching each leader to the spreader assembly. The sinker weight is removable and by reversing the spreader, the hooks are positioned at a desired location adjacent the surface of the water.

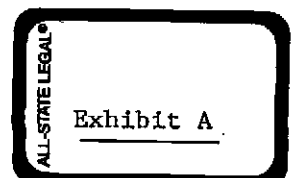
Inventors: **Denny; Thomas A.** (Lorain, OH)
Assignee: **Oberlin Canteen, Inc.** (Oberlin, OH)
Appl. No.: **05/186,327**
Filed: **October 4, 1971**

Current U.S. Class: **43/42.74 ; 43/44.84**
Current International Class: **A01K 91/053 (20060101); A01K 91/00 (20060101); A01k 091/04 ()**
Field of Search: **43/42.74,27.4,44.83,43.13,43.16,44.84,43.12**

References Cited [Referenced By]

U.S. Patent Documents

<u>3190029</u>	June 1965	Bondi
<u>2683324</u>	July 1954	Engelman
<u>3401483</u>	September 1968	Bellah et al.
<u>2162739</u>	June 1939	Mindek, Jr.
<u>2514527</u>	July 1950	Verhota



<u>2157003</u>	May 1939	Mussina
<u>3421250</u>	January 1969	Krieg
<u>3105318</u>	October 1963	Birrell
<u>2877594</u>	March 1959	Birrell

Foreign Patent Documents

36/24017	Dec., 1961	JA
959,600	Mar., 1950	FR

Primary Examiner: Chamblee; Hugh R.
Assistant Examiner: Czerwonky; James H.

Claims

What I claim is:

1. A fishing spreader assembly comprising, in combination, a longitudinally extending metal stand having upper and lower ends, a pair of oppositely disposed flexible spreader arms, each of said spreader arms having a first end and a second end, said first end mounted on said upper end of said stand, said spreader arms being movable between a fishing position and a storage position, a sinker weight mounted adjacent the lower end of said stand, a float freely slidably and independently mounted on said stand between said first ends of said spreader arms and said sinker weight, whereby said float is free to slide along the length of said metal stand between said spreader arms and a point adjacent said lower end of said stand above said sinker weight, hook means for mounting a fishing hook adjacent said second end of each of said spreader arms, said hook means including a loop at said second end of each of said spreader arms, a keeper member adjacent each of said loops, a pair of snelled hooks, each having a leader portion received and extending through a respective one of said loops, attaching means spaced from each of said loops for removably attaching said leaders to said spreader assembly, and a retainer member slidably mounted on said upper end of said stand for holding said spreader arms parallel to and closely adjacent said stand when said spreader arms are in the storage position.
 2. A fishing spreader assembly according to claim 1, wherein said float is constructed of rigid polyurethane foam.
 3. A fishing spreader assembly according to claim 1, including a loop at said upper end of said stand for receiving a fishing line.
 4. A fishing spreader assembly according to claim 1, wherein said sinker weight is removably mounted on said stand and including means for attaching a fish line adjacent said lower end of said stand.
 5. A fishing spreader assembly according to claim 1 wherein said keeper member comprises a keeper bead.
 6. A fishing spreader assembly according to claim 1 wherein said retainer member comprises a retainer bead.
 7. A fishing spreader assembly according to claim 1 wherein said attaching means comprises a coil mounted adjacent said upper end of said stand.
-

Description

BACKGROUND OF THE INVENTION

It is well known among fishermen that two items of major importance in attempting to catch fish are water temperature and depth.

Many fish, for examples perch and walleye, feed near the bottom of a body of water. To catch these fish, it is normally necessary to place the baited hooks closely adjacent the bottom, however, not on the bottom.

Fishing spreaders, whereby two or more hooks may be attached to one fishing line, are well known in the art and are, for example, used by many perch fishermen on the Great Lakes. One of the problems with many prior art spreaders is that they increase the fisherman's difficulties with respect to placing the fishing hooks adjacent the bottom. Because the spreaders add considerable weight to the line, the fisherman loses his sense of touch in sensing the bottom. Furthermore, if the fisherman is drift fishing, even though he started in a proper position with respect to the bottom, when using prior art spreaders, the elevation of the fishing hooks are often moved out of their proper position as the fisherman's boat moves and the elevation of the bottom changes.

Still another problem often encountered with prior art spreaders was the difficulty in storing such spreaders in, for example, the fisherman's tackle box.

It is the primary purpose of the presnet invention to provide an improved fishing spreader assembly which enables the fisherman to place his baited hooks at their proper vertical elevation in a body of water.

It is still another object of the present invention to provide a fishing spreader assembly which may be readily stored.

It is a further object of the present invention to provide a fishing spreader assembly which may be reversed to place the hooks adjacent the surface of a body of water.

SUMMARY OF THE INVENTION

The present invention is a fishing spreader assembly which includes a longitudinally extending metal stand having an upper end and a lower end. A pair of oppositely disposed flexible spreader arms are attached to the stand and a sinker weight is attached to the lower end of the stand. A float is slidably mounted on the stand between the spreader arms and the sinker weight. Means for mounting a fishing hook are provided adjacent the free end of each of the spreader arms and a retainer member or bead is slidably mounted adjacent the upper end of the stand for holding the spreader arms parallel to and closely adjacent the stand when the spreader arms are in their storage position.

In one embodiment, the sinker weight is removable and the spreader assembly is reversible.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a diagrammatic view, partially in cross section, showing a fishing spreader assembly according to the present invention and showing in dashed lines the removal of a hook from one of the spreader

arms;

FIG. 2 is a view of the fishing spreader assembly shown in FIG. 1 in its storage position;

FIG. 3 is a view similar to FIG. 1 of another embodiment of a fishing spreader assembly according to the present invention;

FIG. 4 is a view of the fishing spreader assembly shown in FIG. 3 with the sinker weight removed and the spreader assembly reversed so that the hooks are positioned adjacent the surface of a body of water;

FIG. 5 is a view of the fishing spreader assembly shown in FIG. 3, showing the fishing assembly in its storage position; and

FIG. 6 is a diagrammatic view showing a hook weld directly to the outer end of a spreader arm.

DESCRIPTION OF THE PREFERRED EMBODIMENTS

Referring to FIGS. 1 and 2, a fishing spreader assembly, according to the present invention is generally indicated by the reference number 10. The spreader assembly 10 includes a longitudinally extending metal stand 11 having an upper end 12 and a lower end 13. The metal stand 11 is relatively stiff. A pair of oppositely disposed flexible spreader arms 14 and 15 are mounted adjacent the upper end 12 of the stand 11. The spreader arms 14 and 15 each have first ends 16 which are connected to the metal stand 11 by a clamping sleeve 17. The spreader arms 14 and 15 also include second ends 18 which in the present embodiment are bent to define loops 19.

In the present embodiment, the spreader arms 14 and 15 are constructed of a single piece of flexible wire, defining a line engaging loop 20 adjacent the upper end 12 of the metal stand 11. A sinker weight 21 is attached to the lower end 13 of the stand 11.

A float 22 is freely slidably mounted on the metal stand 11 between the first ends 16 of the spreader arms 14 and 15 and the sinker weight 21. The float 22 is constructed of buoyant material, for examples, rigid polyurethane foam, cork, or wood. A retainer member, for example, bead 23 is slidably mounted adjacent the upper end 12 of the metal stand 11. The retainer bead 23 also receives and slides along the spreader arms 14 and 15 as will be discussed below. In the present embodiment, a fishing line 24 is attached to the loop 20 and individual hooks 25 and 26 are placed on the loops 19 of the second ends 18 of the respective spreader arms 14 and 15. However, if desired the hooks may be welded directly to the out ends of the spreader arms and the loops 19 eliminated (see FIG. 6). Keeper member, for examples, beads 27 are positioned over the free ends of the loops 19 to retain the hooks 25 and 26 on the respective spreader arms 14 and 15.

Referring to FIG. 1, the hook 26 is removed by moving the keeper bead 27 to the position 27a and then sliding the fishing hook away from the loop 19 as shown at 26a.

The fishing spreader assembly 10 is shown in its operative fishing position in FIG. 1. The spreader arms 14 and 15 bias the hooks 25 and 26 outwardly from the metal stand 11. The fisherman lowers his fishing line 24 until the sinker weight 21 has struck the bottom, indicated by the reference number 30 in FIG. 1. However, even though the fishing line 24 is slack, the spreader assembly 10 does not rest completely on the bottom 30. Rather, the float 22 moves upwardly and assumes the position shown in FIG. 1. The buoyancy of the float 22 holds the upper portion of the spreader assembly 10 in position so that the hooks 25 and 26 are above the bottom 30.

FIG. 2 shows the fishing spreader assembly 10 in its storage position. The fishing line 24 has been removed from the loop 20 and the hooks 25 and 26 have been removed from their respective loops 18. The float 22 has been moved downwardly. The bias of the spreader arms 14 and 15 urge them outwardly to the fishing position shown in FIG. 1; however, to move the arms 14 and 15 to the storage position the retainer bead 23 is pushed downwardly to the position shown in FIG. 2. The retainer bead 23 holds the spreader arms 14 and 15 parallel to and closely adjacent the stand 11.

Another embodiment of a fishing spreader assembly, according to the present invention, is generally indicated in FIGS. 3-5 by the reference number 35. The spreader assembly 35 may be utilized to place the hooks adjacent the bottom of a body of water as shown in FIG. 3, or, in the alternative, near the surface of a body of water as shown in FIG. 4. The FIG. 4 surface position is utilized, for example, when fishing in shallows for black bass. The spreader assembly 35 is cast into the shallows and the baited hooks are pre-positioned a relatively short distance below the surface of the water.

The spreader assembly 35 includes a metal stand 11a having an upper end 12a and a lower end 13a. Flexible spreader arms 14a and 15a are connected adjacent the upper end 12a of the metal stand 11a by a clamping sleeve 17a. Loops 36 and 37 are formed at the outer ends of the spreader arms 14a and 15a, respectively. Slidable keeper member, for examples, beads 38 and 39 are positioned adjacent the loops 36 and 37.

A clasp loop 40 is formed at the lower end of the stand 11a. When the spreader assembly 35 is in the FIG. 3 position, the clasp loop 40 is compressed and removably mounts a sinker weight 41.

A freely slidable buoyant float 22a is positioned between the clasp loop 40 and the upper end 12a of the stand 11a. A retainer member, for example, a bead 23a is mounted on the upper end 12a above the innermost ends of the spreader arms 14a and 15a.

In the present embodiment, a coil 42 is formed at the upper end 12a of the stand 11a. The coil 42 is spaced from the loops 36 and 37 and serves as attaching means in this embodiment, however, other types of attaching means may be utilized. Snelled hooks 43 and 44 are attached to the coil 42 and extend downwardly through the loops 36 and 37 of the spreader arms 14a and 15a. A fishing line 24a is attached to a loop 20a located adjacent the upper end 12a of the metal stand 11a.

When the fishing spreader assembly 35 is in its operative fishing position shown in FIG. 3, the sinker weight 41 moves downwardly to the bottom 30. As with the first embodiment, the float 22a moves upwardly on the metal stand 11a and the buoyancy of the float 22a keeps the snelled hooks 43 and 44 at a predetermined distance above the bottom 30.

Referring to FIG. 5, when the fisherman desires to place the spreader assembly 35 in its storage position, the retainer bead 23a is moved downwardly, thereby holding the spreader arms 14a and 15a in a generally parallel relationship with respect to the stand 11a. When in this storage position, the spreader assembly 35 may be placed in a tackle box.

When the fisherman desires to fish close to the surface of the body of water (indicated by the reference number 45 in FIG. 4), he removes the sinker weight 41 from the clasp loop 40. The clasp loop 40 expands and serves as a means for attaching the fishing line 24a to the spreader assembly 35. When in the FIG. 4 position, the spreader assembly 35 has been rotated 180.degree. with respect to its FIG. 3 position. The float 22a moves along the metal stand 11a until it engages the clasp loop 40. The buoyancy of the float 22a insures that the snelled hooks 43 and 44 are in their proper position below the surface 45.

* * * * *

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Exhibit B

RAINBOW PLASTICS

**ADJUST-A
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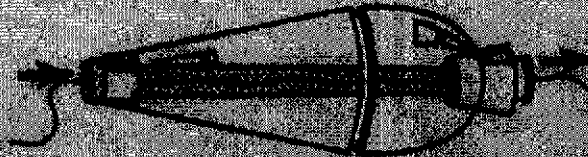


QUALITY FISHING PRODUCTS

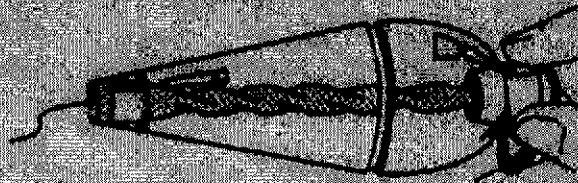
10-cv-01967-JRA Doc # 1-2 Filed 09/02/11
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USE FOR:

- FLY FISHING
- SPIN CASTING
- FLOAT
- SINKER
- WEIGHT



**INSERT LINE THROUGH
TAPER END.**



**POSITION BUBBLE FOR
DESIRED DEPTH OF BAIT,
LURE OR FLY. TWIST
TUBE SEVERAL TIMES
TO SECURE ON LINE.**

PATENT NO. 3744178



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AB-1B 1/4 CLEAR

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970-532-7090